

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications
and Energy on its own Motion into the Appropriate Pricing,
based upon Total Element Long-Run Incremental Costs,
for Unbundled Network Elements and Combinations of
Unbundled Network Elements, and the Appropriate Avoided
Cost Discount for Verizon New England, Inc.
d/b/a Verizon Massachusetts' Resale Services in the
Commonwealth of Massachusetts

D.T.E. 01-20

MOTION FOR CONFIDENTIAL TREATMENT

Verizon Massachusetts ("Verizon MA") requests that the Department, in accordance with G.L. c. 25, § 5D and the Department's Ground Rules in this proceeding, grant this Motion to provide confidential treatment of data that Verizon MA provided in response to the following record requests: RR-DTE 11, RR-DTE 18, RR-DTE 19, RR-DTE 27, RR-DTE 29, RR-DTE 30, RR-DTE 37, RR-DTE 47, RR-DTE 49 (Supplemental), RR-DTE 50 and RR-DTE 50 (Supplemental), RR-DTE 52, RR-DTE 56, RR-DTE 63 and RR-DTE 63 (Supplemental), RR-DTE 65, RR-DTE 66, RR-DTE 67, RR-DTE 69, RR-DTE 71, RR-DTE 96, RR-DTE 97, RR-ATT 3, RR-AG 1 and RR-AG 1 (Supplemental), and the response to Information Request WCOM 2-1 (Supplemental). As shown below, the data Verizon MA has designated as proprietary qualify as "trade secret" or "confidential, competitively sensitive, proprietary information" under Massachusetts law and are entitled to protection from public disclosure in this proceeding.

DISCUSSION

I. LEGAL STANDARDS

In determining whether certain information qualifies as a “trade secret,”¹ Massachusetts courts have considered the following:

- (1) the extent to which the information is known outside of the business;
- (2) the extent to which it is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and its competitors;
- (5) the amount of effort or money expended by the employer in developing the information; and
- (6) the ease of difficulty with which the information could be properly acquired or duplicated by others.

Jet Spray Cooler, Inc. v. Crampton, 282 N.E.2d 921, 925 (1972).

The protection afforded to trade secrets is widely recognized under both federal and state law. In *Board of Trade of Chicago v. Christie Grain & Stock Co.*, 198 U.S. 236, 250 (1905), the U.S. Supreme Court stated that the board has “the right to keep the work which it had done, or paid for doing, to itself.” Similarly, courts in other jurisdictions have found that “[a] trade secret

¹ Under Massachusetts law, a trade secret is “anything tangible or electronically kept or stored which constitutes, represents, evidences or records a secret scientific, technical, merchandising, production or management information design, process, procedure, formula, invention or improvement.” G.L. c. 266, § 30(4); *see also* Mass. G.L. c. 4, § 7. The Supreme Judicial Court, quoting from the Restatement of Torts, § 757, has further stated that “[a] trade secret may consist of any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors.... It may be a formula treating or preserving material, a pattern for a machine or other device, or a list of customers.” *J.T. Healy and Son, Inc. v. James Murphy and Son, Inc.*, 260 N.E.2d 723, 729 (1970). Massachusetts courts have frequently indicated that “a trade secret need not be a patentable invention.” *Jet Spray Cooler, Inc. v. Crampton*, 385 N.E.2d 1349, 1355 (1979).

which is used in one's business, and which gives one an opportunity to obtain an advantage over competitors who do not know or use it, is private property which could be rendered valueless ... to its owner if disclosure of the information to the public and to one's competitors were compelled." *Mountain States Telephone and Telegraph Company v. Department of Public Service Regulation*, 634 P.2d 181, 184 (1981).²

The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), *codified at* 47 U.S.C. §§ 151 et seq., provides further protection for the confidential and proprietary information of telecommunications customers and carriers. *See* 47 U.S.C. § 222. Among other things, § 222 protects both customer proprietary network information and the confidentiality of proprietary carrier data.³

II. SPECIFIC RESPONSES

The attachment to the response to **Record Request DTE 11** provides details on consumer demand for DSL loops greater than 18,000 feet. The information is not readily

² *See also, e.g., Hearing Officer's Ruling on Motions for Protective Treatment*, D.T.E. 99-105 (2000).

³ Section 222(f)(1) defines "customer proprietary network information" in relevant part as:

(A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and

(B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.

In addition, §§ 222(a) and (b) provide:

(a) **IN GENERAL.**—Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.

(b) **CONFIDENTIALITY OF CARRIER INFORMATION.**—A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

available to competitors and would be of value to them in developing competitive market strategies. By releasing this information to the public, competitive companies will be able to determine characteristics of Verizon MA's market segments and will have the ability to utilize this information in developing offerings in direct competition with Verizon MA. The benefits of nondisclosure, and associated evidence of harm to Verizon MA, outweigh the benefit of public disclosure in this instance.

The attachment to the response to **Record Request DTE 18** details the development of the Typical Occurrence Factors and Forward Looking Adjustments Factors for the Telecom Industry Services Operations Center portions of the Non-Recurring Cost study. Specifically, assumptions and adjustments used in forecasting flow-through for such products as UNE Platform, UNE Loop, UNE Digital, UNE Special, Resale, and EELS are identified. In addition, the response provides the forecasted staffing plans to support the products. The information is not published elsewhere or publicly available. Further, Verizon MA regularly seeks to prevent dissemination of the information in the ordinary course of its business. If made public, the requested information could create a competitive disadvantage for Verizon MA, and be of value to other providers in developing competing market strategies. In short, public disclosure of the competitively sensitive material will undermine Verizon MA's ability to compete with other providers of like services that are not subject to equal public scrutiny.

The attachments to the response to **Record Request DTE 19** consists of three files. The first attachment provides the spreadsheet on which the new average work times for UNE Loops, UNE Digital and Platform services were calculated. The second spreadsheet provides the calculations for the new Typical Occurrence Factors and Forward Looking Adjustments Factors. Lastly, the third attachment provides the findings and recommendations presented by Andersen

Consulting to the Telecom Industry Services Operations Center management on April 28, 2000. Among other things, the documents set forth Verizon MA's average work times, factors and engagement results as developed by Andersen Consulting. In addition, the information highlights productivity times for service order processing. The data are the results of an audit and are confidential and have not been publicly disclosed. Information detailing levels of productivity and work flow processes could be competitively useful to other providers in helping to determine strategies and business decisions in Massachusetts. Like Verizon MA, other competitive providers do not disclose such state-specific information in the ordinary course of business.

The attachment to the response to **Record Request DTE 27** is the version of the Recurring Cost model incorporating revised forecast numbers from the response to Information Request ATT 4-29 (Supplemental), which was previously accorded proprietary treatment by the Department as forecast related. (*See* Hearing Officer's Decision, dated December 21, 2001.) Further, planning forecasts of this type require confidential treatment to prevent disclosure of Verizon MA's plans. The data are not know outside of Verizon and are not generally disseminated within the Company.

The attachment to the response to **Record Request DTE 29** identifies forecasts that Verizon has received from CLECs. This is competitively sensitive information identifying the type of forecast submitted by competitors. The information is not published elsewhere or publicly available. Further, Verizon MA regularly seeks to prevent dissemination of the information in the ordinary course of its business. If made public, the requested information could harm CLECs submitting these forecasts and may be of value to other providers in developing competing business strategies. Although names of the CLECs have been redacted,

Verizon MA believes it is appropriate to protect the information because it may be possible to identify specific CLECs by the type of information submitted.

The attachment to the response to **Record Request DTE 30** are guidelines regarding the process the Verizon wholesale forecast group uses. This information is competitively sensitive because it identifies how Verizon MA uses forecast data. The data are confidential and have not been publicly disclosed. Information detailing the process used by Verizon MA's wholesale group to forecast could be competitively useful to other providers in helping to determine investment strategies and business decisions in Massachusetts. Like Verizon MA, other competitive providers do not disclose such state-specific information in the ordinary course of business.

The attachments to the response to **Record Request DTE 37** consists of existing Bell Atlantic engineering guidelines. Attachments 1 and 2 consist of HVAC and lighting systems standards. Attachments 3 and 4 are drafts for combined BA/GTE engineering guidelines for HVAC and lighting. This information consists of internal practices and procedures and is not published elsewhere or publicly available. Further, Verizon MA regularly seeks to prevent dissemination of the information in the ordinary course of its business. If made public, the requested information could create a competitive disadvantage for Verizon MA, and be of value to other providers in developing competing business strategies. Public disclosure of the competitively sensitive material will undermine Verizon MA's ability to compete with other providers of like services.

The response and attachment to **Record Request DTE 47** contains Verizon proprietary information that was submitted to the Department by AT&T. Specifically, this vendor-specific information provides 1997 equipment prices which support the EF&I factor proposed by Verizon

in the New York UNE proceeding. The information is not published elsewhere or publicly available. If made public, the requested information could create a competitive disadvantage for Verizon MA and vendors, and be of value to other providers in developing competing business strategies. Disclosure of the competitively sensitive material will undermine Verizon MA's ability to compete with other providers of like services.

One set of attachments to the response to **Record Request DTE 49 (Supplemental)** contains proprietary information that was made available to parties under protective treatment in the FCC Virginia proceeding. Specifically, the attachments contain vendor-specific information. The information included in the vendor contracts is competitively sensitive material between Verizon MA and a third party. The public disclosure of information, such as terms and pricing, contained within the agreements between Verizon MA and the third-party vendors would compromise the integrity of the agreements. Verizon MA regularly seeks to prevent dissemination of this information in the ordinary course of its business. Also, public disclosure of such information would place both Verizon MA and its vendor at a competitive disadvantage.

The attachment to the response to **Record Request DTE 50** and **Record Request DTE 50 (Supplemental)** provides the agreements between Telcordia and Verizon MA for line sharing data conversion. The information included in the contracts is competitively sensitive material between Verizon MA and a third party. The public disclosure of information, such as terms and pricing, contained within the agreements between Verizon MA and the third party vendor would compromise the integrity of the agreements. Also provided in response is an OSS Cost Analysis - Demand Forecasts and Annual Cost Factors (Attachment M). Competitors could find such service-specific information useful in establishing sales strategies that target particular market segments. Finally, Attachment L of the response contains CLEC and VADI specific information

concerning line sharing arrangements. Verizon MA regularly seeks to prevent dissemination of this information in the ordinary course of its business. Also, public disclosure of such information would place both Verizon MA and other carriers at a competitive disadvantage.

The attachment to the response to **Record Request 52** are updates regarding the most recent Labor Inflation Factors used in Verizon MA's cost studies, updated CPIs that have yet to be used in any cost study in any Verizon jurisdiction, and productivity factors calculated exclusively for Service Costs, based on data derived from the Verizon Business Plan. Verizon MA regularly seeks to prevent dissemination of the information in the ordinary course of its business. If made public, the requested information could create a competitive disadvantage for Verizon MA and undermine Verizon MA's ability to compete with other providers of like services.

The attachment to **Record Request DTE 56** contains Verizon MA proprietary information that was submitted to the Department by AT&T. Specially, this vendor-specific information consist of new and growth switch discounts. The information is not published elsewhere or publicly available. Further, Verizon MA regularly seeks to prevent dissemination of the information in the ordinary course of its business. If made public, the requested information could create a competitive disadvantage for Verizon MA and the relevant vendors, and be of value to other providers in developing competing business strategies. Disclosure of the competitively sensitive material will undermine Verizon MA's ability to compete with other providers of like services.

The attachment to the response to **Record Request DTE 63** and **Record Request DTE 63 (Supplemental)** details SCIS documentation that was provided on CD-ROM. The one document provided in supplemental response represents the printout of the missing electronic

file, from Record Request DTE 63. The information in this documentation is not published elsewhere, is considered confidential and proprietary by a third party. Verizon MA regularly seeks to prevent dissemination of the information in the ordinary course of its business. If made public, the requested information could create a competitive disadvantage for Verizon MA and the relevant vendors, and be of value to other providers in developing competing business strategies.

The attachment to the response to **Record Request DTE 65** provides prices that Verizon paid for Lucent switch replacement jobs in the year 2000. The attachment further identifies the vendor discount, total cost, number of lines, and a detailed breakout of cost for labor, materials and other expenses. The attachment contains competitively sensitive material between Verizon MA and a third party. The public disclosure of information, such as terms and pricing, contained within the agreement between Verizon MA and the third party vendor would compromise the integrity of the agreement. Verizon MA regularly seeks to prevent dissemination of this information in the ordinary course of its business. Also, public disclosure of such information would place both Verizon MA and its vendor at a competitive disadvantage.

The attachment to the response to **Record Request DTE 66** provides the methodology used to develop switch costs based on life-cycle discount. The attachment contains competitively sensitive material between Verizon MA and a third party. Specifically, the data estimates the amount of switching equipment that Verizon MA purchased from Lucent in the last five years as new switch purchases and additions to existing switches, and is limited to Lucent equipment. The public disclosure of information, such as expected growth purchases and estimated growth of new lines, contained within the agreement between Verizon MA and the third-party vendor would compromise the integrity of the agreement. Verizon MA regularly seeks to prevent

dissemination of this information in the ordinary course of its business. The information was produced as proprietary information in the FCC Virginia proceeding, yet adjusted in this proceeding to be Massachusetts specific. Public disclosure of such information would place both Verizon MA and its vendor at a competitive disadvantage.

The attachment to the response to **Record Request DTE 67** provides both the actual and budgeted software expenses for 2001. Specifically, the attachment details the budgeted and actual capital expenditures for 2001. Competitors could find such service-specific information useful in establishing sales strategies that target particular market segments. Public disclosure of the competitively sensitive material will undermine Verizon MA's ability to compete with other providers of like services.

The attachment to the response to **Record Request DTE 69** contains the equipment configurations used in the development of the investments. This attachment contains vendor-specific information, specifically, the spreadsheet Hardware Materials Prices lists part number, price, and source. This information is vendor proprietary and competitively sensitive material between Verizon MA and a third party. The public disclosure of information, such as terms and pricing, contained within the agreement between Verizon MA and the third party vendor would compromise the integrity of the agreement. Verizon MA regularly seeks to prevent dissemination of this information in the ordinary course of its business. Also, public disclosure of such information would place both Verizon MA and its vendor at a competitive disadvantage.

The attachment to the response to **Record Request DTE 71** shows vendor-specific pricing for Lucent and Fijitsu ADMs that contains competitively sensitive material between Verizon MA and third party vendors. The public disclosure of information, such as terms and pricing, contained in the agreements between Verizon MA and the third party vendors would

compromise the integrity of the agreements. Verizon MA regularly seeks to prevent dissemination of this information in the ordinary course of its business. Also, public disclosure of such information would place both Verizon MA and its vendor at a competitive disadvantage.

The attachment to the response to **Record Request DTE 96** provides advertising expenses for wholesale services. Competitors could find such service-specific information useful in establishing sales strategies that target particular market segments. Public disclosure of the competitively sensitive material will undermine Verizon MA's ability to compete with other providers of like services.

The attachment to the response to **Record Request DTE 97** shows the outward movement of UNE loops for the last 13 months. Competitors could find such service-specific information useful in establishing sales strategies that target particular market segments. Public disclosure of the competitively sensitive material will undermine Verizon MA's ability to compete with other providers of like services.

The attachment to the response to **Record Request ATT 3** includes two boxes of information that relate to vendor-specific information regarding the competitive bid process regarding switches. These documents were made available under protective seal in the Virginia FCC proceeding. Competitors could find such service-specific information useful in establishing sales strategies that target particular market segments. If made public, the requested information could create a competitive disadvantage for Verizon MA and the relevant vendors, and be of value to other providers in developing competing business strategies.

Attachment 2 to the responses to **Record Request AG 1 and AG 1 (Supplemental)** provide the supporting information on a wire center specific basis that was used by Verizon RI in assigning wire centers to density zones. By releasing this information to the public,

competitive companies will be able to determine characteristics of Verizon MA's market segments and will have the ability to utilize this information in developing offerings in direct competition with Verizon MA. The benefits of nondisclosure, and associated evidence of harm to Verizon MA, outweigh the benefit of public disclosure in this instance.

The attachment to the response to **Record Request WCOM 2-1 (Supplemental)** consists of vendor contracted costs and quotes that support the material investments and other inputs used in collocation-related cost studies. Specifically, the attachments identify quotes and pricing details from Tyco/Lucent, YUASA, American Detroit Diesel, Alturdyne, and Energy Dynamics for microprocessors, emergency engines and battery distribution fuse bays. The information included in the contracts is competitively sensitive material between Verizon MA and third parties. The public disclosure of information, such as terms and pricing, contained within the agreements between Verizon MA and the third party vendors would compromise the integrity of the agreements. Verizon MA regularly seeks to prevent dissemination of this information in the ordinary course of its business. Also, public disclosure of such information would place both Verizon MA and its vendor at a competitive disadvantage.

CONCLUSION

The information detailed above is not readily available to competitors and would be of value to them in developing competitive business strategies. Competitive disadvantage is likely to occur if the confidential information is made public – solely as a result of regulatory oversight.⁴ The benefits of nondisclosure, and associated evidence of harm to Verizon MA (and the relevant competitors and vendors), outweigh the benefit of public disclosure in this instance. By releasing this information to the public, competitive companies will be able to determine characteristics of Verizon MA’s market segments, network plans, and vendor relationships and will have the ability to utilize this information in developing business strategies in direct competition with Verizon MA. Historically, both the Department and the telecommunications industry have recognized such information to be confidential and appropriately subject to protection by order and the execution of reasonable nondisclosure agreements. Nothing has changed in terms of law or circumstance that warrants an abandonment of that protection. Given the increasingly competitive telecommunications world, the Department should not now depart from its past practice and apply G.L. c. 25, § 5D to permit public disclosure of private, commercial information. Disclosure of the competitively sensitive material will undermine Verizon MA’s ability to compete with other providers of like services that are not subject to equal public scrutiny. In balancing the public’s “right to know” against the public interest in an effectively functioning competitive marketplace, the Department should continue to protect information that, if made public, would likely create a competitive disadvantage for the party complying with legitimate discovery requests.

⁴ If Verizon MA were not a regulated entity, the relevant information would not be available for public inspection.

WHEREFORE, Verizon MA respectfully requests that the Department grant this Motion to afford confidential treatment to all of the above items. As demonstrated above, the information is entitled to such protection, and no compelling need exists for public disclosure in this proceeding.

Respectfully submitted,

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